IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23759 of 2005
With
SPECIAL CIVIL APPLICATION No. 23760 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMITABEN R PATEL - Petitioner(s)
Versus
SHREYAN ADHIKSHAK/COMMISSIONEROF HIGHER EDUCATION & 3 - Respondent(s)

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Appearance :
MR CL SONI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1, 4,
MR VH DESAI for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3, 3.2.1,3.2.2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/09/2006

ORAL JUDGMENT

1. In these petitions since similar question arises they have been heard together.

2. Petitioners claim pensionary benefits from the Government for having rendered pensionable service.

3. Short facts leading to the petitions are as follows:

4. The petitioner of Special Civil Application No.23760/05 is a retired professor from a Private Affiliated Aided Science College. Originally, he was appointed as a Demonstrator by respondent no.2-college on 13th June, 1970. In the year 1977, he was declared surplus and absorbed in Higher Secondary School where he served till 8/9/1986. On availability of vacancies thereafter, he was recalled by his College where he joined on 9/9/1986. He continued to serve respondent no.2-college till his retirement on 30th October, 2005.

5. Government by resolution dated 15/10/1984, formulated a pension scheme for teaching staff of private affiliated aided colleges. For the existing staff, within the specified time, option was to be exercised whether to switchover to the pension scheme or to be governed by the existing CPF scheme. Time limit for exercising such options was extended by the Government by different resolutions namely resolution dated 10/1/1986 and 11/10/1988. The petitioner desirous of switching over to the pension scheme exercised his option on 13/2/1987. It appears that after forwarding his option, the college also brought the petitioner to GPF scheme. Eventually, however, since after the retirement the Government refused to pay pension to the petitioner, he has filed this petition.

6. Petitioner of Special Civil Application No. 23759/05 similarly is a retired professor of the same Science College having retired w.e.f. 30/10/2005. She originally joined respondent no.2-college as a Demonstrator on 22/6/1970. In the year 1977 she was also declared surplus and sent to Higher Secondary

School in Baroda where she worked till 16/9/86. Upon availability of vacancies she was recalled in her parent college where she joined on 17/9/1986. She also exercised option for pension on 13/2/1987. College brought over the petitioner to GPF scheme but upon retirement she did not receive pension from the Government. She has, therefore, filed this petition seeking pensionary benefits.

7. Learned advocate Shri Soni submitted that the petitioners had exercised their valid option of pension in terms of Government Resolutions. It is, therefore, not permissible for the Government to deny pensionary benefits to the petitioners.

8. On the other hand learned Asst. Government Pleader Shri Gori placing reliance on the affidavit in reply filed by the respondents submitted that the petitioners have exercised their options after the last date for exercising such options, as extended by Government Resolutions dated 10/1/1986 had expired, but fresh extension for exercising option was not yet granted by the Government which came to be granted

only vide Government Resolution dated 11/10/1988. He, therefore, submitted that the exercise of option in between would not be valid.

9. The intention of the petitioners to be covered by the pension scheme is not in doubt. They had disclosed such intention way back in 1987 when they were still in service and the pension scheme was still quite fresh. These petitioners had number of years of service still remaining when they approached the Government seeking coverage of pension scheme instead of CPF scheme. It is true that they had exercised their option after the last date i.e. 31st March, 1986, as extended by Government Resolution dated 10/1/1986, had expired. However, one cannot lose the sight of the fact that shortly thereafter, the Government itself granted one more chance for exercising such options by Government Resolution dated 11/10/1988 and permitted all interested teachers to come over to the pension scheme by exercising option latest by 11/1/1989.

9.1. One can also not lose sight of the fact that

after forwarding the option forms of the petitioners though earlier covered by CPF scheme, they were brought over to GPF scheme and their CPF Contribution of the employer had from thereon ceased. This would be a clear indication to the petitioners that their options are accepted and they are covered by the pension scheme since this was essential condition of the pension scheme formulated by the Government by Government Resolution dated 15/10/1984. Additionally, I also find that there is nothing on the record to suggest that rejection of the options of the petitioners was conveyed to them by the Government. Combine effect of these two factors namely non- communication of the rejection of the options exercised by the petitioners and shifting the petitioners from CPF to GPF, would certainly permit the petitioners to carry a belief that their options are accepted. If the Government was desirous of rejecting their options at the relevant time, the petitioners should have been communicated the same. Had this timely action taken, the petitioners would have surely exercised their options in response to the extension provided by the Government Resolution

dated 11/10/1988. Thus, on account of the action on the part of the respondents in not communicating the rejection of the options of the petitioner and in fact bringing the petitioners over to GPF scheme, the petitioners lost an opportunity to exercise the option pursuant to the further extension granted by the Government. The petitioners cannot be penalised for no fault of theirs. Additionally, learned advocate for the petitioners is also justified in pointing out that when the second extension was granted by the Government in the year 1986, the petitioners opted for being governed under the Pension Scheme. When the Government formulated the pension scheme in the year 1984 and also granted first extension for exercising option, the petitioners were not serving in the colleges and in fact they were rendered surplus and they were discharging their duties in different schools. The petitioners, therefore, soon after being recalled by their colleges exercised their options which were never rejected by the Government. In fact the colleges concerned stopped employer's contribution to the provident fund of the petitioners and brought

them over to GPF scheme which would be a strong indication to suggest that their options are accepted. Combined effect of these factors would be that the exercise of options by the petitioners cannot be rejected by the Government. The petitioners shall have to be governed by the pension scheme. Accordingly, it is directed that the respondents shall process the pension papers of the petitioners pursuant to the pension scheme formulated by the Government and pension as found due and payable shall be paid expeditiously and not later than three months from the date of receipt of a copy of this order.

10. With these directions, petitions are disposed of. Rule is made absolute. No costs.

(Akil Kureshi, J.)

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